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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,010	10/30/2003	Michael E. Landry	5259-10700USO2	7409
23492	7590	06/24/2008		
PAUL D. YASGER ABBOTT LABORATORIES 100 ABBOTT PARK ROAD DEPT. 377/AP6A ABBOTT PARK, IL 60064-6008			EXAMINER SWIGER III, JAMES L.	
			ART UNIT 3733	PAPER NUMBER
			NOTIFICATION DATE 06/24/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patents\_Abbott\_Park@abbott.com  
Legal\_Patents@abbott.com

### Office Action Summary

**Application No.**

10/698,010

**Applicant(s)**

LANDRY ET AL.

**Examiner**

JAMES L. SWIGER

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 March 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 123-192 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 123-192 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 07 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date 3/4/2008  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1, line 24 recites the limitation "the first closure member." There is insufficient antecedent basis for this limitation in the claim, as it is not positively claimed prior to this recitation in the claim. The recitation in line 24 positively mentions this claim structure.

### ***Claim Rejections - 35 USC § 103***

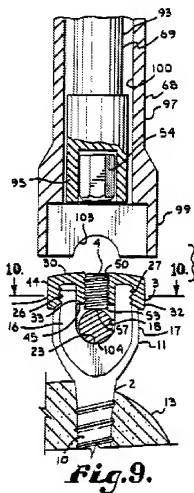
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 123-127, 130-135, 141-145, 148-153, 159-164, 167-172, and 178-192 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (US Patent 6,251,112). Jackson discloses a system for performing spine surgery comprising a bone screw (10) having a slot (23), a first collar assembly (30) rotatably coupled to the bone screw and also having a slot (area between 4 and 57), a rod (20, which is curved Fig. 6) having a width necessary to fit within the slot, a threaded closure member (4) for securing the rod within the slot, a first sleeve (68) having a channel (100) wherein the sleeve has a length longer than the bone screw (see Fig. 3), and wherein the sleeve

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has both a proximal and distal ends and wherein the wall of the sleeve has an opening (103) that is arc-shaped and aligns with the slot of the collar (or bone screw, per claim 142), and wherein the sleeve is decoupled at its distal end from the collar/bone screw (see Fig. 9) once the rod, first closure member, and first bone screw are implanted. See image copied below.



Jackson discloses the claimed invention except for having multiple elements in the system, namely first and second bone screws, collars and sleeves. It is noted that in spinal surgery, it is known to use multiple of the assemblies such as taught by Jackson,

as it is in the interest of spinal fixation to have spinal securing devices connecting multiple areas of the spinal to the rods have the necessary anchoring points.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the assembly of Jackson having a plurality of multiple elements such as bone screw, collars and sleeves, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 128-129, 146-147 and 165-166 rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson '112 as applied to claims 123, 142, and 159 above, and further in view of Koros et al. (US patent 6,139,493). Jackson discloses the claimed invention except for a multi-channel sleeve. Koros et al. disclose a device that has sides that form a channel, providing access at its distal end. The sleeve has smaller channels (see fig. 3), which allow access between a proximal and distal end (see Fig. 5). This is considered a multi-channel sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Jackson having at least a multi-channel sleeve in view of Koros et al. so that the surgeon can have multiple routes of access to the distal end of the sleeve, either for fixation of the screw, or for even connecting/disconnecting the sleeve from the collar or screw.

Claims 136-140, 154-158, and 173-177 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson '112 as applied to claims 123, 142, and 159 above, and further in view of Le Couedic et al. (US Patent 6,090,113). Jackson discloses the claimed invention except for a frame to hold the sleeves together to achieve distraction,

translation, or compression in the use of the devices. Le Couedic et al. discloses a frame assembly (31) that allows for precise adjustment of the spinal device and for arranging the pedicle screws for insertion (Col. 2, lines 10-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Jackson having a frame to hold the sleeves together further in view of Le Couedic et al. to more accurately position the spinal system during fixation of the vertebrae.

### ***Response to Arguments***

Applicant's arguments with respect to claims 123-192 have been considered but are moot in view of the new ground(s) of rejection.

In regards to applicant's request of addressing claim 153, it is noted that this was a typographical error. This same limitation was also under claim 135 and also claim 172. Further in both rejections, the sleeve was sized to permit the passage of a tool. While the previous rejection is now moot in view of the new grounds of rejection based on applicant's amendments, the rejection of the above claim still stands and has been include in the current action.

Further, the terminal claimer filed 3/4/2008 has been approved on 4/14/2008.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES L. SWIGER whose telephone number is (571)272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES L SWIGER/  
Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733